

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1068 83

THE UNITED STATES OF AMERICA

Appellant,

vs.

**JACOB HARK AND HYMAN YAFFEE, CO-PARTNERS
DOING BUSINESS AS LIBERTY BEEF COMPANY.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MASSACHUSETTS.**

**STATEMENT OPPOSING JURISDICTION AND
MOTION TO DISMISS.**

✓ **LEONARD PORETSKY,**

✓ **JOHN H. BACKUS,**

✓ **WILLIAM H. LEWIS,**

Counsel for Appellees.

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THE DISTRICT OF MASSACHUSETTS.

APPELLEES' STATEMENT OPPOSING JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES, ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FROM THE DISTRICT OF MASSACHUSETTS AND MOTION TO DISMISS.

The Appellees move to dismiss the appeal herein, on the grounds that the Supreme Court of the United States has no jurisdiction.

Statement Against Jurisdiction.

Under Rule 12, Paragraph 3 of the Supreme Court of the United States in support of the motion to dismiss and in opposition to the jurisdiction of the Supreme Court of

the United States, Appellees submit the following statement disclosing matters or grounds making against the jurisdiction of the Supreme Court of the United States.

The United States attempts to appeal from a decision or finding of the United States District Court for the District of Massachusetts quashing the indictment in the above-captioned matter.

The jurisdiction of the Supreme Court on an appeal is limited to those matters set forth in the Act of March 2, 1907 as amended by the Act of May 9, 1942 (34 Stat. 1246; 56 Stat. 401; 18 U. S. C. 682) commonly known as the Criminal Appeals Act.

This court has jurisdiction only if the decision or judgment of the District Court is based upon the invalidity or construction of the Statute upon which the indictment was founded, or from a decision or judgment sustaining a special Plea in Bar when the defendant has not been put in jeopardy.

The court below rendered a written opinion quashing the indictment. The Appellant's statement of jurisdiction indicates that it is relying upon that portion of the Criminal Appeals Act which relates to an appeal from a special Plea in Bar. The Appellees say:

I. That the appeal was not seasonably taken within thirty days, in that the finding and decision upon the motion to quash was made on March 5, 1943 as appears from the opinion itself and the original docket entries in the court.

II. The attempts of the Appellant to stretch the limitation rule of thirty days within which an appeal must be taken by the United States, by having an additional and unnecessary order made by the court bearing date of March 31, 1943, did not as a matter of law extend the time within which an appeal could

be taken from the finding and decision of March 5, 1943.

III. The appeal is not based upon the invalidity or construction of the Statute upon which the information or indictment is founded.

IV. The motion to quash does not constitute a special Plea in Bar within the meaning of the Criminal Appeals Act.

It is respectfully submitted that the Appeal should be dismissed for lack of jurisdiction.

Respectfully submitted,

(Signed) LEONARD PORETSKY,
JOHN H. BACKUS,
WILLIAM H. LEWIS,
Attorneys for Appellees.

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